

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

INFOGROUP, INC., Delaware corporation;  
INFOUSA, INC., Delaware corporation;  
and INFOUSA MARKETING, INC.,  
Delaware corporation,

Plaintiffs,

vs.

VINOD GUPTA and  
DATABASEUSA.COM LLC, a Nevada  
limited-liability company,

Defendants.

Case No. 8:14-CV-0049

**MOTION TO CLARIFY OR TO ADD  
PARTY DEFENDANTS**

Plaintiffs Infogroup, Inc., InfoUSA, Inc., and InfoUSA Marketing, Inc. (collectively, “Infogroup”) hereby move the Court for an Order (1) treating Infofree.com, LLC, a Nevada limited liability company, as well as “Infofree.com,” “AtoZ Databases,” and “AtoZDatabases.com,” as named parties to the suit, or (2) allowing them to be added to the suit as named Defendants without the necessity of further issuance or service of process, and that the current Answers and discovery responses of the existing Defendants shall stand as the Answers and discovery responses for them. Infogroup shows the Court as follows:

1. In its First Amended Complaint, Infogroup named both Infofree.com and AtoZDatabases.com as trade names, divisions and/or affiliates of Defendant DatabaseUSA.com, LLC.<sup>1</sup>

2. In its Answer to the First Amended Complaint, Defendants admitted that both Infofree.com and AtoZDatabases.com were operated by Defendant

---

<sup>1</sup> [Filing No. 23 at ¶¶ 31](#), 33, 41, 71, 89, 98, 142-51, 164, 202 & 206.

DatabaseUSA.com, LLC.<sup>2</sup> Similar admissions are in Defendants' Answer to the Third Amended Complaint.<sup>3</sup> The reasonable interpretation of "operating" Infofree.com and AtoZDatabases.com is that DatabaseUSA.com LLC has ownership of and controls them.

3. In various Interrogatories to Defendants, Plaintiffs asked questions regarding DatabaseUSA.com, LLC with both Infofree.com and AtoZ Databases listed as trade names, which Defendants answered without objection to the scope regarding the inclusion of Infofree.com and AtoZ Databases as tradenames of DatabaseUSA. See, e.g. Defendants Answers to Interrogatories 1 – 5 of the first set.<sup>4</sup>

4. In taking the deposition of high level executive of Infofree.com, Mr. Robert Smith testified as follows: Q. "So as of today [2-16-18], what are the primary business divisions, or trade names, of DatabaseUSA? A. "DatabaseUSA, AtoZdatabases, . . . Infofree, . . . ." <sup>5</sup>

5. On the DatabaseUSA website, as of June 27, 2018, DatabaseUSA reports that Vinod Gupta "decided to establish a new, improved venture with similar roots. Together with his co-founders, they created AtoZDatabases, DatabaseUSA.com ® and Infofree.com. This co-founding team brought over 300 years of database knowledge to DatabaseUSA.com ® **and its [sic] sister companies.**"<sup>6</sup> These public statements and admissions by Defendants that AtoZDatabases and Infofree.com were sister companies

---

<sup>2</sup> Filing No. 227 at ¶¶ 2, 31 & 33.

<sup>3</sup> Filing No. 231 at ¶¶ 2, 27, 29 & 69

<sup>4</sup> Defendants' Answers to Plaintiffs' Interrogatories (Set One), Filing No. 293-1 at ECF p. 31. Infogroup has also included a demonstrative version of these requests with the relevant trade names highlighted for ease of review. (Hoffman Decl. Ex. A) Defendants' answers were marked AEO and have been redacted from Exhibit A.

<sup>5</sup> Smith Dep. 23:19-23; Hoffman Decl. Ex. B.

<sup>6</sup> Hoffman Decl. Ex. C. The current version of the website may be accessed here: <http://databaseusa.com/index.php/company-overview/>

or trade names of DatabaseUSA led Plaintiffs to allege the claims in the manner they did.

6. In the process of collecting financial information from Defendants, defense counsel vaguely asserted, for the first time on May 5, 2018, a defect of party defendants by providing the following table of financial disclosures:

		Total Revenue 2013	Total Revenue 2014	Total Revenue 2015	Total Revenue 2016	Total Revenue 2017	Revenue January 2018-date
Infogroup	Salesgenie						
	Reference USA						
	infoUSA.com						
Database USA	Infofree	Separate Company – Not Sued	Separate Company – Not Sued	Separate Company – Not Sued	Separate Company – Not Sued	Separate Company – Not Sued	Separate Company – Not Sued
	A2Z Databases	Included with # Below	Included with # Below	Included with # Below	Included with # Below	Included with # Below	Included with # Below
	Database USA.com						

As shown above, Defendants asserted, for the first time, that “Infofree” was not a named party defendant. Note Defendants agreed “AtoZ Databases” was part of DatabaseUSA.com.

7. Plaintiff’s counsel raised the issue to the Court at the next hearing, and defense counsel agreed that it would be reasonable to add Infofree.com as a party to the suit:

**Hoffman:** . . . Mr. Domina brought up the point in regard to the financial disclosure, that Infofree wasn’t explicitly named in the lawsuit. And, this claim was heavily discussed throughout the complaint and we don’t want claims that we’ve pled and done discovery on to be dismissed on a technicality. And so I know that [lead counsel] wanted to propose an amendment of the complaint to add Infofree as a specific defendant in the case, so that might go along with that discussion.

**Domina:** I'm willing to entertain that as part of the discussion, I've got to take it up with my client, but I'm certainly willing to entertain it as a part of the discussion. ***And I have to agree with you that they've been discussed throughout.***<sup>7</sup>

So, Counsel for Plaintiffs recommended either a written stipulation or stipulated entry in this Court's pretrial order, to that effect. However, when pressed for signatures, Defendants declined.

8. Based on review of Secretary of State records it appears that Infofree.com, LLC, is a Nevada limited liability company, apparently owned by Mr. Gupta's private equity group called Everest Group, LLC, which holding company owns all of Mr. Gupta's various companies and businesses.<sup>8</sup>

9. After research of the various Secretary of State records, Plaintiffs cannot find any indication that AtoZDatabases.com is an actual legal entity, and instead is a trade name or division of DatabaseUSA.com. In its publications, DatabaseUSA.com reports AtoZDatabases.com as its division.<sup>9</sup>

10. Though Defendants have not specifically asserted that AtoZ Databases and AtoZDatabases.com are not part of a named Defendant, given the veiled nature in which Defendants asserted the defect of party Defendants, Infogroup moves to include as named Defendants "AtoZDatabases.com" and "AtoZ Databases", which are tradenames or divisions of DatabaseUSA.com, LLC, all out of an abundance of caution.

11. There has been abundant notice in the pleadings and discovery to AtoZ Databases, AtoZDatabases.com, and Infofree.com that their conduct was called into question as violating certain contractual and legal obligations, that they were controlled

---

<sup>7</sup> [Filing No. 323](#) at 16:58-17:54 (emphasis added).

<sup>8</sup> Nevada Secretary of State Filing for Infofree.com, LLC, Hoffman Decl. Ex. D.

<sup>9</sup> January 21, 2015 Press Release, Hoffman Decl. Ex. E.

and directed by Vinod Gupta and/or DatabaseUSA.com, LLC, and that their conduct caused harm to Plaintiffs.

12. As such, to avoid any technical, unpled defense, this Court should allow AtoZ Databases, AtoZDatabases.com and Infofree.com as well as Infofree.com, LLC to be treated as or be added as named party defendants to this suit, as if process had been issued and served upon them (as was originally declared as reasonable by counsel for Defendants), and that the current answers and discovery responses of the existing Defendants shall stand as the answers and discovery responses for them.

WHEREFORE, Plaintiffs Infogroup, Inc., InfoUSA, Inc., and InfoUSA Marketing, Inc., move the Court for an Order (1) treating Infofree.com, LLC, a Nevada limited liability company, as well as "Infofree.com," "AtoZ Databases," and "AtoZDatabases.com," as named parties to the suit, or (2) allowing them to be added to the suit as named Defendants without the necessity of further issuance or service of process, and that the current Answers and discovery responses of the existing Defendants shall stand as the Answers and discovery responses for them, and such other, further and different relief as this Court finds just and equitable.

Dated this 27th day of June 2018.

INFOGROUP, INC., INFOUSA, INC., and  
INFOUSA MARKETING, INC., Plaintiffs

By: /s/ Elizabeth A. Hoffman

Gregory C. Scaglione, #19368  
Elizabeth A. Hoffman, #25875  
KOLEY JESSEN P.C., L.L.O.  
One Pacific Place, Suite 800  
1125 South 103rd Street  
Omaha, NE 68124-1079  
(402) 390-9500; (402) 390-9005 (facsimile)  
greg.scaglione@koleyjessen.com  
elizabeth.hoffman@koleyjessen.com

*Attorneys for Plaintiffs*

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 27th day of June 2018, the foregoing pleading was filed electronically via the Court's CM/ECF system, which provided electronic notification of such filing to:

David A Domina  
DOMINALAW Group PC LLO  
2425 South 144th Street  
Omaha, NE 68144-3267  
(402) 493-4100  
[ddomina@dominalaw.com](mailto:ddomina@dominalaw.com)

/s/ Elizabeth A. Hoffman  
Elizabeth A. Hoffman